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**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

2005 NOV 23 A 11: 37

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 5560

DATE COMPLAINT FILED: October 12, 2004

DATE OF NOTIFICATION: October 19, 2004

LAST RESPONSE RECEIVED: September 5,  
2005

DATE ACTIVATED: August 8, 2005

EXPIRATION OF STATUTE OF LIMITATIONS:

June 1, 2009; August 19, 2009

COMPLAINANT:

Paul Dunlap

RESPONDENTS:

Case for Congress and James H. Case, in his official  
capacity as treasurer

Representative Edward E. Case

Stephen M. Case

Maui Land and Pineapple Company, Inc.

Phoenix Group, LLC

North Hawaii Health Care Group, LLC

KFC Engineering Management, Inc.

KFC Airport, Inc.

RELEVANT STATUTES AND  
REGULATIONS:

2 U.S.C. § 432(c)(2)

2 U.S.C. § 434(b)(3)(A)

2 U.S.C. § 441b(a)

2 U.S.C. § 441f

2 U.S.C. § 441g

11 C.F.R. § 100.10

11 C.F.R. § 100.12

11 C.F.R. § 102.9(a)

11 C.F.R. § 110.4(b)

11 C.F.R. § 110.4(c)

INTERNAL REPORTS CHECKED:

Federal Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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**I. INTRODUCTION**

The complaint in this matter alleges that Case for Congress and James H. Case, in his official capacity as treasurer (the "Committee"), Representative Edward E. Case ("Case"), Stephen M. Case, Maui Land and Pineapple Company, Inc. ("Maui"), Phoenix Group, LLC ("Phoenix"), and North Hawaii Health Care Group, LLC ("North Hawaii") violated provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").<sup>1</sup> Because a newspaper article attached to the complaint reported that KFC Engineering Management, Inc. and KFC Airport, Inc. (collectively "KFC entities") had settled a case with a state election commission concerning illegal contributions made to the campaign of "U.S. Rep. Ed Case," they also were notified of the complaint.<sup>2</sup>

As set forth in more detail below, there is insufficient evidence to support reason to believe findings that any of the respondents violated the Act. Therefore, this Office recommends that the Commission find no reason to believe that Case or the Committee accepted contributions in the name of another or accepted prohibited corporate contributions, or that the Committee failed to properly identify a contributor or accepted excessive cash or anonymous cash contributions. This Office further recommends that the Commission find no reason to believe that any of the other respondents made illegal or prohibited contributions, and close the file as to all the respondents.

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<sup>1</sup> MUR 5560 consists of two complaints filed by the same complainant on the same day that both contain allegations involving the Committee. They were circulated to the Commission together and we are treating them as a single complaint for purposes of this Report.

<sup>2</sup> The National Group and Oldaker, Biden & Belari are mentioned in the complaint as examples of Case allegedly being "in the pockets of big business" rather than in relation to specific allegations. These firms were not notified of the complaint.

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**II. DISCUSSION**

**A. Allegations of violations of 2 U.S.C. §§ 441b(a) and 441f**

The complaint first alleges that Case or the Committee accepted contributions made in the name of another and improper corporate contributions. These allegations involve the KFC entities, unnamed "wealthy donors," Stephen M. Case and Maui, and Phoenix and North Hawaii.

Asserting that the "Case campaigns have a history of accepting" such contributions, the complaint attaches an article from the Honolulu Star-Bulletin dated October 7, 2004, regarding a settlement between the KFC entities and the Hawaiian Campaign Spending Commission ("HCSC") of allegations that the KFC entities had made excessive and "false name contributions" to a number of campaigns, including that of "U.S. Rep. Ed Case."<sup>3</sup> In a sworn response, the Committee's treasurer states he contacted the executive director of the HCSC, who told him the case referenced in the news article involved Case's 2002 gubernatorial campaign.<sup>4</sup> According to the response, the HCSC told the Committee it believed a woman allegedly received funds from the KFC entities to contribute to Case for Governor, but "there was no reason to believe that the Case for Governor campaign could have known that her contribution might have been from an illegal source." The KFC entities' responses also state these alleged contributions concerned Case's gubernatorial campaign in 2002 and not his Congressional campaign. Thus, to the extent that the complaint relies on the attached newspaper article as evidence that any Case

<sup>3</sup> The other campaigns involved concerned local and state races

<sup>4</sup> Case first ran for Congress shortly after narrowly losing the 2002 Democratic gubernatorial primary on September 21, 2002 <http://www.smallbusinesshawaii.com/primary2002.html>; Dan Boylan, *Which Way Will Ed Run?*, Midweek (Feb 23, 2005), available at <http://www.midweek.com/coverstory/coverstory022305.html> The Committee filed its Statement of Organization on October 23, 2002, and amended it on November 13, 2002, for a special election due to the death of Representative Patsy Mink

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1 campaign—state or federal—has a “history” of accepting improper contributions, the  
2 Committee’s sworn response shows otherwise.

3       Apparently based on this purported “history,” the complaint alleges that “money seems to  
4 have been funneled to the Case campaign from wealthy donors in the Kamuela 96743 (Big  
5 Island) area” because of a “disproportionate high volume of donors from that zip code.”

6       According to the complaint, “Case is known to have wealthy agricultural supporters in Kamuela  
7 who must have given money to Case’s campaign through family and friends.”

8       Without context or any other specific facts, this allegation is merely speculation and does  
9 not provide a sufficient threshold to support reason to believe findings. Although the Committee  
10 did not specifically address the allegation concerning money having been “funneled” to it from  
11 wealthy donors in a single zip code in Hawaii, it does not alter this conclusion. *See* Statement of  
12 Reasons of Commissioners Wold, Mason and Thomas in MUR 4850 (Deloitte & Touche, LLP,  
13 *et. al*, issued July 20, 2000) (“A mere conclusory accusation without any supporting evidence  
14 does not shift the burden of proof to respondents. While a respondent may choose to respond to  
15 a complaint, *complainants* must provide the Commission with a reason to believe violations  
16 occurred.”).

17       The complaint further alleges that contributions to the Committee from Stephen M. Case,  
18 allegedly Case’s cousin and a controlling shareholder in Maui, and from other named Maui  
19 personnel, were actually corporate contributions from Maui. Complainant speculates that “Steve  
20 Case is clearly channeling funds from his controlling interest in Maui Land and Pineapple to”  
21 Case’s campaign. None of these alleged corporate contributions exceeded \$2,000. The response  
22 from Maui asserts that each of these contributions was made from the individual’s personal funds

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1 and was not reimbursed, and sworn affidavits to this effect from the individuals named in the  
2 complaint are attached to the response. *See* Attachment 1.

3 This allegation is also faulty. The subject contributions are legal on their face, are for  
4 different amounts and were made on more than one date. *See id.* The Commission has indicated  
5 its concerns about relying on conclusory allegations and making negative inferences from the  
6 mere fact that employees of the same corporation have made contributions contemporaneously.  
7 *See, e.g.,* Statement of Reasons of Commissioners Wold, Mason and Thomas in MUR 4850  
8 (Deloitte & Touche, LLP, *et. al*, issued July 20, 2000). Moreover, without any other evidence  
9 provided by the complainant, the response by Stephen M. Case and Maui, including sworn  
10 statements from the contributors, refutes this allegation.

11 In addition to alleging that Case or the Committee accepted corporate contributions  
12 through conduits, the complaint alleges that Case or the Committee directly accepted prohibited  
13 corporate contributions from Phoenix (\$1,000), which is “also registered as Maui Plastic Surgery  
14 Corporation,” and North Hawaii (\$500). In its response, Phoenix asserts that it is a single-  
15 member limited liability company (“LLC”). It further explains that Phoenix’s former name was  
16 Maui Plastic Surgery, LLC, and any reference to “Maui Plastic Surgery Corporation” in state  
17 databases merely reflects consent given by that completely separate company for the LLC to use  
18 a similar name. Likewise, North Hawaii’s response asserts that it is not a corporation and  
19 encloses a supporting sworn affidavit averring that it is a single member LLC. Public records  
20 from the Hawaii Business Regulation Division show both Phoenix and North Hawaii are  
21 registered as LLCs, not corporations.

22 As the responses and state records show that Phoenix and North Hawaii are single  
23 member entities that have elected to be treated as LLCs and not corporations for federal taxation

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1 purposes, they are treated as persons under the Act. *See* AO 1998-15 (Fitzgerald for Senate, Inc.)  
2 (“Hence, as a person, but not a corporation, [an] LLC [i]s subject to the Act’s contribution limits  
3 rather than its prohibitions.”); *see also* 2 U.S.C. § 431(11); 11 C.F.R. § 100.10. Thus, the  
4 allegations that Phoenix and North Hawaii made prohibited corporate contributions, and that  
5 Case or the Committee accepted prohibited corporate contributions, have been rebutted.<sup>5</sup>

6 In sum, although the complainant in this matter states that he has “personal knowledge of  
7 each of the violations” alleged, the only information he provides as to prohibited corporate and  
8 conduit violations comes from publicly available materials that do not show illegal activity; the  
9 remainder of his assertions rest only on speculation or incorrect conclusions drawn from public  
10 records. In their Statement of Reasons in MUR 5141 (Moran for Congress, issued March 11,  
11 2002), all six Commissioners stated that a complaint may provide a basis for reason to believe  
12 findings if it alleges “sufficient specific facts” that, if proven, would constitute a violation of the  
13 Act. The six Commissioners also stated, however, that “[u]nwarranted legal conclusions from  
14 asserted facts . . . or mere speculation, . . . will not be accepted as true.”

15 **B. Allegations of violations of 2 U.S.C. §§ 432(c)(2), 441g and 434(b)(3)(A)**

16 The complaint challenges the Committee’s identification of a \$300 contributor because it  
17 only listed his first initial and last name, rather than his full first name, on a Schedule A filed  
18 with the Commission. The correct address of the contributor was disclosed on the form. In its  
19 response, the Committee stated it used the contact information listed to discover the contributor’s  
20 first name is “Ed,” and that it would amend its pre-primary report to reflect this. A contributor

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<sup>5</sup> As Phoenix points out in its response, another complaint by a different complainant against Phoenix and the Committee that contained the same allegation concerning the making and receipt of corporate contributions, was previously dismissed upon a recommendation from the ADR Office (MUR 5456 and ADR 190)

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1 search on the Commission's website reveals the contributor's full name, indicating the  
2 Committee amended its report as it said it would.

3 Committees are required to identify each person who makes a contribution in excess of  
4 \$200. 2 U.S.C. § 434(b)(3)(A). "Identification means, in the case of an individual, his or her full  
5 name, including: First name, middle name or initial, if available, and last name; . . . ." 11 C.F.R.  
6 § 100.12; *see* 2 U.S.C. § 431(13). Although the Committee's original identification of a single  
7 donor by his first initial rather than his full first name may have been technically deficient, it  
8 appears that the Committee later provided the contributor's first name, warranting dismissal of  
9 such *de minimus* misreporting. Moreover, the complainant does not actually allege a reporting  
10 violation, but rather uses the original omission of the donor's full first name as a basis to  
11 speculate that the "Case campaign has attempted to hide contributor information." This  
12 speculative allegation, unaccompanied by anything other than a minor disclosure error that has  
13 apparently been amended, is insufficient to support any reason to believe findings.

14 Finally, the complaint alleges the Committee "routinely" accepted cash contributions of  
15 over \$100 in violation of 2 U.S.C. § 441g and anonymous contributions of over \$50 in violation  
16 of 2 U.S.C. § 432(c)(2). *See* 11 C.F.R. §§ 110.4(c)(1) – (3). Copies of Schedules A attached to  
17 the complaint show four cash contributions of \$810 on December 19, 2004, \$200 on December  
18 31, 2004, \$300 on May 26, 2004 and \$476 on June 1, 2004, for a total of \$1,786.

19 In a second response submitted on September 1, 2005, the Committee states that it does  
20 not believe it accepted any cash contribution in excess of \$50 from any one contributor, and  
21 advises any person giving more than \$50 in cash that he or she must provide identifying

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information.<sup>6</sup> According to the Committee, the ticket cost of fundraisers held on December 19 and 31, 2004 was \$20 per person, and the ticket cost of the fundraisers held on May 26 and June 1, 2004 was \$35 per person. It further states that the Schedules A showing cash contributions on these dates reflects aggregated amounts from a number of people attending the fundraiser who paid for their tickets in cash and that its method of reporting conforms to 11 C.F.R. § 110.4(c), as well as to AOs 1981-48 (Muskegon County Republican Party) and 1980-99 (Republican Roundup Committee).

No individual may make a cash contribution which exceeds \$100. 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c)(1). The treasurer of a political committee is required to keep a record of “the name and address of any person who makes any contribution in excess of \$50, together with the date and amount of such contribution . . . .” 2 U.S.C. § 432(c)(2). Accordingly, anonymous cash contributions over \$50 are prohibited. *Id.*; 11 C.F.R. § 110.4(c)(3). However, cash and anonymous cash contributions in excess of \$100 and \$50, respectively, may be aggregated for reporting purposes when such contributions are collected at an event where there are a large number of small contributors. *See* AO 1981-48; AO 1980-99 (citing 11 C.F.R. § 102.9(a), “an account [of all contributions received] shall be kept by any reasonable accounting procedure.” (Alteration in original)). One of the “two possible accounting methods which would satisfy the recordkeeping requirements for contributions under \$50 . . . would be to record the name of the event, the date(s) contributions were received for that event, *and the total amount of contributions received on each day for that event.*” AO 1980-99 (emphasis added). Without any additional evidence from the complaint, it appears from the Committee’s response that the

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<sup>6</sup> The Committee also states it asks attendees of fundraisers, many who show up without prior notice, to provide their name, address and telephone number in a register upon their arrival

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Committee followed the guidance set forth in the Commission's advisory opinions, and therefore complied with the reporting and accounting requirements for cash and anonymous cash contributions.

Based on the above, this Office recommends that the Commission find no reason to believe that: Case for Congress and James H. Case, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b(a), 441f, 441g, 432(c)(2), or 434(b)(3)(A); Representative Edward E. Case, KFC Engineering Management, Inc., KFC Airport, Inc., Stephen M. Case, or Maui Land and Pineapple Company violated 2 U.S.C. §§ 441b(a) or 441f; and Phoenix Group, LLC or North Hawaii Health Care Group, LLC violated 2 U.S.C. § 441b(a). This Office further recommends that the Commission close the file as to all respondents.

### **III. RECOMMENDATIONS**

1. Find no reason to believe that Case for Congress and James H. Case, in his official capacity as treasurer, accepted corporate contributions in violation of 2 U.S.C. § 441b(a), contributions in the name of another in violation of 2 U.S.C. § 441f, prohibited cash contributions in violation of 2 U.S.C. § 441g, prohibited anonymous cash contributions in violation of 2 U.S.C. § 432(c)(2), or failed to properly identify a contributor in violation of 2 U.S.C. § 434(b)(3)(A).
2. Find no reason to believe that Representative Edward E. Case accepted corporate contributions in violation of 2 U.S.C. § 441b(a) or contributions in the name of another in violation of 2 U.S.C. § 441f.
3. Find no reason to believe that KFC Engineering Management, Inc. made corporate contributions in violation of 2 U.S.C. § 441b(a) or contributions in the name of another in violation of 2 U.S.C. § 441f.
4. Find no reason to believe that KFC Airport, Inc. made corporate contributions in violation of 2 U.S.C. § 441b(a) or contributions in the name of another in violation of 2 U.S.C. § 441f.
5. Find no reason to believe that Stephen M. Case made or consented to corporate contributions in violation of 2 U.S.C. § 441b(a) or made contributions in the name of another in violation of 2 U.S.C. § 441f.

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6. Find no reason to believe that Maui Land and Pineapple Company, Inc. made corporate contributions in violation of 2 U.S.C. § 441b(a) or contributions in the name of another in violation of 2 U.S.C. § 441f.
7. Find no reason to believe that Phoenix Group, LLC made corporate contributions in violation of 2 U.S.C. § 441b(a).
8. Find no reason to believe that North Hawaii Health Care Group, LLC made corporate contributions in violation of 2 U.S.C. § 441b(a).
9. Approve the appropriate letters.
10. Close the file as to all the respondents.

Lawrence H. Norton  
General Counsel

Rhonda J. Vosdingh  
Associate General Counsel  
for Enforcement

November 23, 2005  
Date

BY:

Susan L. Lebeaux  
Susan L. Lebeaux  
Assistant General Counsel

J. Cameron Thurber  
J. Cameron Thurber  
Attorney

Attachment:

1. Affidavits of Stephen M. Case and officers of Maui Land and Pineapple, Inc.

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